

statements necessary to comply with this part.

Subpart 96.6—Appeals

SOURCE: 53 FR 5968, Feb. 26, 1988, unless otherwise noted.

§ 96.601 Purpose and scope of subpart.

(a) The purpose of this subpart is to set forth procedures by which grantees and contractors may appeal final determinations by DOL officials responsible for audit resolution as a result of audits, where such appeal rights and procedures are not established elsewhere in regulations and statutes administered by DOL or its subagencies. This subpart shall not apply where such appeal rights and procedures are so specified elsewhere.

(b) Subgrantees and subcontractors shall have only such appeal rights as may exist in subgrants or subcontracts with the respective grantees or contractors.

(c) For the purpose of this subpart, the term *grant* shall include all agreements for Federal assistance from DOL which are not contracts as defined in the Contract Disputes Act.

§ 96.602 Contracts.

Upon a contractor's receipt of the DOL contracting officer's final determination as a result of an audit, the contractor may appeal the final determination to the DOL Board of Contract Appeals, pursuant to 41 CFR part 29-60 and 48 CFR part 2933 or pursue such other remedies as may be available under the Contract Disputes Act.

§ 96.603 Grants.

The DOL grantor agencies shall determine which of the two appeal options set forth in paragraphs (a) and (b) of this section the grantee may use to appeal the final determination of the grant officer. All grants within the same grant program shall follow the same appeal procedure.

(a) *Appeal to the head of the grantor agency, or his/her designee, for which the audit was conducted—(1) Jurisdiction—(i) Request for hearing.* Within 21 days of receipt of the grant officer's final determination, the grantee may transmit, by certified mail, return receipt

requested, a request for hearing to the head of the grantor agency, or his/her designee, as noted in the final determination. A copy must also be sent to the grant officer who signed the final determination.

(ii) *Statement of issues.* The request for a hearing shall be accompanied by a copy of the final determination, if issued, and shall specifically state those portions of the final determination upon which review is requested. Those portions of the final determination not specified for review shall be considered resolved and not subject to further review.

(iii) *Failure to request review.* When no timely request for a hearing is made, the final determination shall constitute final action by the Secretary of Labor and shall not be subject to further review.

(2) *Conduct of hearings.* The grantor agency shall establish procedures for the conduct of hearings by the head of the grantor agency, or his/her designee.

(3) *Decision of the head of the grantor agency, or his/her designee.* The head of the grantor agency, or his/her designee, should render a written decision no later than 90 days after the closing of the record. This decision constitutes final action of the Secretary of Labor.

(b) *Appeal to the DOL Office of Administrative Law Judges—(1) Jurisdiction—(i) Request for hearing.* Within 21 days of receipt of the grant officer's final determination, the grantee may transmit by certified mail, return receipt requested, a request for hearing to the Chief Administrative Law Judge, United States Department of Labor, Suite 700, Vanguard Building, 1111 20th Street NW., Washington, DC 20036, with a copy to the grant officer who signed the final determination. The Chief Administrative Law Judge shall designate an administrative law judge to hear the appeal.

(ii) *Statement of issues.* The request for a hearing shall be accompanied by a copy of the final determination, if issued, and shall specifically state those portions of the final determination upon which review is requested. Those portions of the final determination not specified for review shall be considered resolved and not subject to further review.

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(iii) *Failure to request review.* When no timely request for a hearing is made, the final determination shall constitute final action by the Secretary of Labor and shall not be subject to further review.

(2) *Conduct of hearings.* The DOL *Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges*, set forth at 29 CFR part 18, shall govern the conduct of hearings under paragraph (b) of this section.

(3) *Decision of the administrative law judge.* The administrative law judge should render a written decision no later than 90 days after the closing of the record.

(4) *Filing exceptions to decision.* The decision of the administrative law judge shall constitute final agency action by the Secretary of Labor, unless within 21 days after receipt of the decision of the administrative law judge, a party dissatisfied with the decision or any part thereof has filed exceptions with the Administrative Review Board, United States Department of Labor, specifically identifying the procedures or finding of fact, law, or policy with which the exception is taken. Any exceptions not specifically urged shall be deemed to have been waived. Thereafter, the decision of the administrative law judge shall become the decision of the Secretary of Labor, unless the Administrative Review Board, United States Department of Labor, within 30 days of such filing, has notified the parties that the case has been accepted for review.

(5) *Review by the Administrative Review Board, United States Department of Labor.* Any case accepted for review by the Administrative Review Board, United States Department of Labor, shall be decided within 180 days of such acceptance. If not so decided, the decision of the administrative law judge shall become the final decision of the Secretary of Labor.

[53 FR 5968, Feb. 26, 1988, as amended at 61 FR 19985, May 3, 1996]

APPENDIX A TO PART 96—OFFICE OF MANAGEMENT AND BUDGET CIRCULAR NO. A-128—UNIFORM AUDIT REQUIREMENTS FOR STATE AND LOCAL GOVERNMENTS

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Management and Budget

CIRCULAR NO. A-128

April 12, 1985

To the Heads of Executive Departments and Establishments.

Subject: Audits of State and Local Governments.

1. *Purpose.* This Circular is issued pursuant to the Single Audit Act of 1984, Pub. L. 98-502. It establishes audit requirements for State and local governments that receive Federal aid, and defines Federal responsibilities for implementing and monitoring those requirements.

2. *Supersession.* The Circular supersedes Attachment P, "Audit Requirements," of Circular A-102, "Uniform requirements for grants to State and local governments."

3. *Background.* The Single Audit Act builds upon earlier efforts to improve audits of Federal aid programs. The Act requires State or local governments that receive \$100,000 or more a year in Federal funds to have an audit made for that year. Section 7505 of the Act requires the Director of the Office of Management and Budget to prescribe policies, procedures and guidelines to implement the Act. It specifies that the Director shall designate "cognizant" Federal agencies, determine criteria for making appropriate charges to Federal programs for the cost of audits, and provide procedures to assure that small firms or firms owned and controlled by disadvantaged individuals have the opportunity to participate in contracts for single audits.

4. *Policy.* The Single Audit Act requires the following:

a. State or local governments that receive \$100,000 or more a year in Federal financial assistance shall have an audit made in accordance with this Circular.

b. State or local governments that receive between \$25,000 and \$100,000 a year shall have an audit made in accordance with this Circular, or in accordance with Federal laws and regulations governing the programs they participate in.

c. State or local governments that receive less than \$25,000 a year shall be exempt from compliance with the Act and other Federal audit requirements. These State and local